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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

CARLTON S. DARGUSCH, *Petitioner,*

v.

COLUMBUS BAR ASSOCIATION, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Carlton S. Dargusch, prays that a writ of certiorari issue to review a final judgment of the Supreme Court of Ohio of December 2, 1964, imposing upon petitioner an indefinite suspension from the practice of law.

Opinions Below

The opinion of the Board of Commissioners of the Supreme Court of Ohio appears in Appendix A, *infra,* p. 20. The opinion of the Supreme Court of Ohio dated December 2, 1964, is reported at 177 O.S. 95 and appears in Appendix A, *infra,* p. 31.

Jurisdiction

The judgment of the Supreme Court of Ohio was entered on December 2, 1964, and a timely application for rehearing

was denied on December 23, 1964. On March 2, 1965, Mr. Justice Stewart signed an order extending the time for filing this petition to May 19, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Question Presented

Whether in state disbarment proceedings denial of confrontation by suppression of the identity of the informant-accuser is consistent with the due process of law guaranty of the Fourteenth Amendment to the United States Constitution.

Constitutional and Statutory Provisions Involved

The Fourteenth Amendment to the Constitution of the United States, provides in part that "No state shall . . . deprive any person of life, liberty, or property without due process of law . . ."

Rule XVIII of the Supreme Court of Ohio provides in part:

> "(10) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. . . .
>
> "(13) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recom-

mendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

"(14) REVIEW BY ENTIRE BOARD OF COMMISSIONERS; BOARD TO ADMINISTER PRIVATE REPRIMAND. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. . . .

"(15) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF BOARD AFTER REVIEW. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court. . . ."

"(16) SHOW CAUSE ORDER ISSUED BY THE COURT TO RESPONDENT. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of

said Board of Commissioners shall not be confirmed and a disciplinary order entered. . . ."

Statement of the Case

Petitioner, a member of the Ohio Bar with forty years of practice and many posts of public trust and honor, has been suspended from the practice of law by the Supreme Court of Ohio. The suspension is based on a finding of breach of responsibility by petitioner toward three trust beneficiaries. The beneficiaries themselves have made no accusation against petitioner and disclaim any dissatisfaction with his conduct, and the identity of the informant-accuser upon whose charges the Columbus Bar Association prosecuted this case was repeatedly withheld from petitioner during the disbarment hearing. *Review is sought on the question whether, consistent with the Fourteenth Amendment, the identity of the informant-accuser may be suppressed and confrontation denied in state disbarment proceedings.*

1. *The Pertinent Background*

Petitioner was admitted to the Bar in the State of Ohio in 1925 and soon became a tax attorney with the State Government. Having risen in the ranks to the position of Ohio Tax Commissioner and having served his state well for a number of years in public office, he resigned to undertake private law practice in 1937. One of his first accounts was an annual retainer as counsel for the Sunday Creek Coal Company. He commenced active military service in 1940 and remained in service until 1947, achieving the rank of Brigadier General and National Deputy Director of Selective Service. In 1951, after petitioner's return to private practice, he was asked to succeed the incumbent trustee of the living trusts (valued at three million dollars) of three sisters who were the beneficial owners of the stock

of the Sunday Creek Coal Company. Simultaneously petitioner was asked to become Chairman of the Board of Directors of Sunday Creek so that the Company could be managed in the direct interest of the three trust beneficiaries (Tr. 51-53, 458-462).

Petitioner was from the first given the same latitude as his predecessor in managing the Company. In obvious recognition of the inherently dual nature of petitioner's responsibility as trustee and also Chairman of Sunday Creek, the trust instrument provided that petitioner was to administer and invest the trust "without any restrictions to which fiduciaries are ordinarily subject, except the duty to act in good faith and with reasonable care" (Joint Exhibit C). The amount and nature of his compensation as Chairman of the Board of Sunday Creek were not stipulated in writing. It was understood that petitioner desired to draw his remuneration as Board Chairman not so much in salary but principally in corporate benefits, such as retirement, insurance, automobile expenses, and the like (Tr. 54-55, 469-470). The beneficiaries agreed (Tr. 54-55, 208, 214) that as Chairman of the Board of Sunday Creek petitioner could draw compensation (in addition to the retainer to petitioner's firm and his regular fees as trustee) not in excess of that of his predecessor —$20,000 per year plus corporate benefits. Between 1951 and 1959 petitioner served as Chairman of Sunday Creek, drawing average remuneration of about $12,000 per year—five thousand in cash and seven thousand in such benefits as retirement, insurance, automobile, and expenses (Tr. 553).

In 1959, Sunday Creek was faced with a serious cash problem, principally because of the long-established company policy of paying annually substantial liquidating dividends (Tr. 35, 433-437). As a result, the beneficiaries and the trustee differed as to the management of the assets, and

the trusts were revoked. Petitioner resigned as Chairman of Sunday Creek together with the other Directors, and one of the sisters took over its direct management (Tr. 221-224). A thorough independent examination was then conducted of petitioner's management of Sunday Creek and his remuneration from 1951 to 1959 (Tr. 220-221) on the basis of which private counsel for the trust beneficiaries advised them that petitioner had merely "made mistakes in judgment and for that no man is actionable" (Tr. 267). Nevertheless counsel urged the beneficiaries to make certain claims upon him for adjustments, and as a result of these claims and certain cross-claims by petitioner, a general settlement was entered into in 1959 wherein petitioner made a payment of $17,000 to the Company and received insurance policies in return in the value of $11,600 (Tr. 647, 665). Petitioner and the beneficiaries assumed that the matter was settled for all time.

2. *The Ethics Charges*

Three years later, in 1962, the matter was suddenly revived when some yet unidentified accuser presented charges alleging that petitioner's actions as Chairman of Sunday Creek between 1951 and 1959 had been unethical to the trust beneficiaries in numerous different respects (Tr. 282-283). After informal investigation by the Columbus Bar Association, in accordance with the rules of the Supreme Court of Ohio concerning discipline of lawyers, a formal complaint (*infra,* Appendix B) was filed and prosecuted by the Bar Association as "relator" before the Board of Commissioners of the Supreme Court of Ohio. That Court's Rule XVIII(8) provides that such a complaint may, but need not be, "signed by the person aggrieved". In this case no such signature accompanied

the complaint, nor is the name of the informant-accuser yet known to petitioner or to the Board of Commissioners which conducted the hearing and made the proposed findings in this case. At the hearing, the petitioner, one of the trust beneficiaries, and the hearing Board itself asked for the name of the informant-accuser who had charged breach of ethical responsibility by petitioner, but the Bar Association which investigated and prosecuted the charges saw fit to withhold it.

3. *The Hearing*

At the hearing before the Board of Commissioners in December, 1963 petitioner was tried on fourteen different "conflict of interest" charges of breach of ethics as Chairman of Sunday Creek between 1951 and 1959 (*infra,* Appendix B, p. 37) and was ultimately acquitted on all but three. The charges on which he was convicted (Nos. 1, 6 and 10, *infra,* pp. 37, 39, 41) allege that ethical duty to the beneficiaries was breached by petitioner's failure specifically to advise them in advance of certain of his "compensations": (1) the adoption by Sunday Creek's Board of Directors (duly reflected in the minutes) of a pension for the widow of any corporate officers who might die in office, (2) the receipt by petitioner's law firm of a $900 fee for drafting of the papers on a $70,000 loan from one of the three trusts to Sunday Creek, and (3) the reimbursement by the Company of about fifteen hundred dollars a year for petitioner's bills, representing chiefly business entertainment and travel expenditures.

The first witness called by the prosecution at the disbarment hearings ("as upon cross-examination") was the accused (Tr. 50). He admitted implementation by the Board of Directors under his Chairmanship of the widow's pension for company officers, the $900 fee charged by his firm for

drafting of loan papers, and Sunday Creek's reimbursement of his expenses; but he testified that such incidental payments and benefits were within his understanding with the beneficiaries and that no specific approval of such detailed disbursements and benefits was expected or required (Tr. 54-55, 469). (1) Concerning the widow's pension voted by the Board of Directors and duly reflected in its minutes, petitioner pointed out that it was applicable to all Sunday Creek officers and was usual in modern corporate practice (Tr. 394-396). (2) Concerning the $70,000 loan to Sunday Creek by one of the three trusts in a time of financial crisis, petitioner testified without contradiction that the $900 fee was for work actually performed, and paid with the beneficiary's knowledge and approval (Tr. 554-548, 192-199). (3) Concerning his expenses reimbursed by the Company, petitioner testified to the beneficiaries' approval of such non-cash benefits. He pointed out that with all of the corporate "fringe benefits" added to his cash salary as Chairman of Sunday Creek, his average annual receipts had been approximately $12,000—far below the $20,000 salary of his predecessor (Tr. 552-553, 575). And he stated that the beneficiaries were fully informed at the outset of his intention to draw remuneration principally through corporate benefits rather than cash salary (Tr. 54-55, 469, 489).

The only other material witness called by the prosecution was Mrs. Sexton, one of the three sisters and trust beneficiaries. She substantially corroborated the testimony of petitioner although recollecting fewer specific conversations concerning the method for his compensation. Mrs. Sexton testified that throughout the years 1951-1959 she had seen petitioner almost every week, principally concerning one of the other business properties in the trust (Tr. 218, 230), but that she left the management of Sunday Creek exclusively to petitioner, having no interest in its details in

any respect (Tr. 218, 229-231, 265).[1] She confirmed that at the commencement of his duties petitioner had indicated his interest in remuneration through benefits rather than cash, and that he would adhere to the compensation paid his predecessor (Tr. 208, 214). With respect to the basic allegations against petitioner, she *declined* to join therein or to assert any breach by him in the failure specifically to inform the beneficiaries of the compensation items alleged in the charges (Tr. 218, 229-231, 239, 266-270, 274).[2] Indeed, *none of the trust beneficiaries nor any other person* testified that petitioner's failure to give specific notice to the beneficiaries of the compensation items involved in the charges against him violated his understanding and arrangement with the trust beneficiaries.

The testimony of Mrs. Sexton concluded with a demand to know the name of the person accusing the petitioner. When asked by a member of the Board whether she had commenced the proceedings, Mrs. Sexton answered (Tr. 266):

> "I have nothing whatsoever to do with this proceedings, nor have any of my sisters, nor have anybody I know or with whom I have a contact. I don't know who instituted them. I cannot find out. I must say I

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[1] "General Dargusch did not discuss the administrative policy of Sunday Creek with me in any detail at any time. There was no reason why he should. He was a trustee. He was the Chairman of the Board, and he simply did not do it." (Tr. 218)

[2] Concerning the charge of conflict of interest by petitioner in his acts and remunerations as Chairman of Sunday Creek, on which he stands convicted, Mrs. Sexton testified (Tr. 271):

> "CHAIRMAN VOGELGESANG: Any conflict between his operation of the Sunday Creek Coal Company and the administration of the trust, your trust?
>
> "THE WITNESS: They were so hopelessly involved, there couldn't be a conflict in interest. It is like two drowning men having conflict of interest in the middle of the Atlantic Ocean on a life preserver. They are hanging on to each other."

am not very grateful to them. It seems to me a man is accused by someone who will not come out in the open and name himself. It is a strange way to work if I may make that statement.

"CHAIRMAN VOGELGESANG: Did I understand that nobody of your family have had any part of making the complaint here?

"THE WITNESS: None whatsoever. That is unequivocable, none whatsoever. I had no part. My sisters to my certain knowledge had no part in it unless they are certainly not telling me the truth.

"CHAIRMAN VOGELGESANG: Do you know where this proceeding was started?

"THE WITNESS: I haven't the slightest idea. If I knew the name of this witness who was responsible for them, I would darken even his Christmas eve."

The Chairman responded: *"The panel does want to know. We want to know why these proceedings were filed"* (Tr. 266). When the Chairman continued to press on this subject, the witness finally stated (Tr. 273):

"I have nothing to do with the charges. I didn't institute them. I don't know who did. I haven't the foggiest idea, not the foggiest. It seems to me strange that if what the General did was so terrible, it wasn't brought up in 1959. This is a layman's point of view, I grant you, and I submit it only as that. I don't understand any part of this. I am a witness in a matter that I can't find out who brought the matter.

"This is the first time I was called to testify about something I don't even know why I am here. It does seem if anybody wanted to complain about General

Dargusch about the Bar Association it would be somebody connected with the Sunday Creek Coal Company and it wasn't. I am not necessarily on the General's team, I am just on the team of fairness. I am not on anybody's team. I am on my family's team and Sunday Creek. In this particular instance, I can only say that somebody unknown to me is trying to 'get' the General to use today's jargon."

4. *Denial of Confrontation*

In view of the repeated questions raised about the identity of petitioner's accuser, the attorney for the prosecution stated immediately after Mrs. Sexton's testimony (Tr. 276) that "I think we had better clear the air here if you gentlemen have questions about how this matter arose . . .", and made reference to the receipt of the charges by the Columbus Bar Association in 1962 and their subsequent investigation. This, however, failed to satisfy the Board, whose Chairman remarked (Tr. 277) that "*Somebody starts the ball rolling. It must have started somewhere with the Bar Association.*" Thereupon, the attorney for the prosecution explained that the charges were originally transmitted to the Columbus Bar Association from the Secretary of the State Committee on Grievances, who had received them from the Chairman of that Committee, but he still did not identify the original informant-accuser (Tr. 282-283).

The remainder of the hearing added little to the evidence on the ultimate question whether petitioner had been unethical in his failure to make express disclosures to the trust beneficiaries of the compensations involved in the charges. It is noteworthy, however, that at the close of the prosecution's proof and over objection of the accused, the prosecution was permitted to amend the charge concerning the widow's pension voted by the Board of Directors, by

adding the allegation that it was "accomplished without the knowledge or consent of the beneficiaries" (Tr. 380-386). Moreover, on the same question of disclosure to beneficiaries, the Chairman of the Board subsequently announced that *"The burden would be on the Respondent to show that there had been disclosure as the Canon requires. If they don't have that in the record, that is for them to worry about"* (Tr. 626).

At the end of the hearing, with no witness having testified that the compensations charged against petitioner violated his understanding with the trust beneficiaries, and with the beneficiaries themselves disclaiming any conflict of interest or breach of duty by the accused, the identity of the real accuser had become a pertinent question, as reflected in the Board's own repeated desire to know who had instituted the charges. Accordingly, prior to the close of the hearing petitioner's counsel requested the Board (each member of which has power under Rule XVIII(31) "to issue subpoenas and to cause testimony to be taken under oath") to obtain disclosure of the accuser's identity, but the Board declined to grant it (Tr. 670-671):

> "MR. ADDISON: May we ask the panel make an investigation on its behalf as to the source of these charges? We feel as lawyers, as members of the public, that this panel—it is part of our job, too—we would like to know whether the panel is being used for some other purpose than for what it was intended.
>
> "Bear in mind, I am not making any criticism of the Bar Association, I was president just as these two men were. Charges were handed to them. We don't know where they came from. Mr. Isaac says they came from Mr. Schwer. Mr. Schwer, as I recall, was one of the Commissioners of the Board which naturally it would come from, but where it came from before that, we

don't know. We think the Board is entitled to know and so do [are] we.

"CHAIRMAN VOGELGESANG: I would suggest that if you have any such request that it be made to the Board by way of the secretary of the Board. We are here merely as a panel designated by—a panel of the Board to hear the particular charges involved, and we do not feel that we are warranted in speaking for the Board on the request that you have in mind.

"Beyond that, I don't think we can go. We have expressed our own curiosity, but actually there is a question whether we have a right to make it a matter of moment in this hearing. We are here to do the job that is presented to us by way of a complaint and the answer that has been filed and hear the evidence as you gentlemen have presented it to us. That is the extent of our duty. Beyond that, we can do nothing. We are willing to go if and when we are so instructed."

On July 7, 1964, the Board of Commissioners issued its findings and recommendation to the Supreme Court of Ohio. These acquitted petitioner on eleven counts but convicted him on the three compensations above set forth on the theory that in petitioner's failure to obtain specific beneficiary approval thereof he had committed a breach of faith to the beneficiaries (*infra*, Appendix A, p. 20). On these findings, the Board recommended that petitioner be publicly reprimanded. Thereafter on July 7, 1964, the Supreme Court of Ohio issued an Order to Show Cause why the proposed findings and recommendation should not be "confirmed and the disciplinary order entered." On September 29, 1964 the Court issued a new Order to Show Cause asking in addition whether in case of an affirmance, petitioner should be reprimanded, suspended or disbarred.

In resisting the Court's adoption of the proposed findings, petitioner urged at the outset that he was entitled to confrontation of his accuser, and that his constitutional rights would be violated were the Court to adopt findings based on a hearing wherein confrontation was denied. In his October 20, 1964 "Response to Order to Show Cause" (pp. 1, 24) petitioner urged that "To this day the Columbus Bar Association has not disclosed the complainant's name and thus Respondent has been denied the chance to subject his accuser to cross-examination. To say the least due process requires this"; and that "the beneficiaries of the trust involved state they have no complaint. The complaint was filed by a person whose identity the Columbus Bar Association refuses to disclose and therefore Respondent has been denied his constitutional right to cross examine his accuser." To that constitutional objection the Bar Association filed no response. On December 2, 1964, the Supreme Court of Ohio adopted the findings of fact proposed by its Board of Commissioners (with some minor variations), making no reference to petitioner's constitutional plea. The Court substituted an indefinite suspension of petitioner for the reprimand recommended by its own Board of Commissioners (*infra*, Appendix A, p. 31).[3]

Petitioner filed a timely motion for rehearing, urging anew that deprivation of confrontation was a "denial of due process of law in contravention of the Fourteenth Amendment . . ." and asking that the Court order a rehearing with confrontation afforded therein (pp. 1, 4). On December 23, 1964, rehearing was denied without opinion.

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[3] In some sixty disciplinary cases before the Supreme Court of Ohio since 1957, when it assumed jurisdiction of disbarment actions, the Court increased the recommended penalty in only two cases prior to this proceeding. In one case (D.D. 19; 172 Ohio St. 467) the Court made a finding of guilt beyond that of its Board of Commissioners, and in the other (D.D. 28; 173 Ohio St. 330) it increased the penalty based on respondent's prior history of misconduct.

On this record a variety of questions arise about the accusatory proceedings resulting in petitioner's suspension after a lifetime of unblemished legal practice: (i) the first witness called by the prosecution was the accused, (ii) at the close of the prosecution's case it was permitted to enlarge its charge on the corporate widow's pension, to allege petitioner's failure to give prior notice thereof, (iii) on that critical question of notice to beneficiaries the Board ruled that the accused bore the affirmative burden of proof, (iv) no accusing witness testified that the remunerations not specifically disclosed to the beneficiaries were required to be disclosed within the understanding between the parties and in fact the only testimony (by both the accused and the "injured" beneficiary) was to the contrary, and (v) the Court increased the recommended discipline from mere reprimand to indefinite suspension tantamount to disbarment. These circumstances independently present serious due process issues, but the clearest unfairness of all was the failure to identify petitioner's accuser and make him available for examination in the disbarment proceedings. That confrontation issue, especially in the context of a hearing lacking traditional protections afforded the defendant in accusatory proceedings, presents an important constitutional question for this Court's review.

REASON FOR GRANTING THE WRIT

Denial of Confrontation by Suppression of the Informant-Accuser's Identity in State Disbarment Proceedings Presents an Important Due Process Issue for this Court's Review.

i. Denial of confrontation in state disbarment proceeding presents a substantial constitutional question. Its appropriateness for this Court's review is indicated by the repeated grant of certiorari on closely related issues at

recent terms of court. See e.g. *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96; *Cafeteria Workers* v. *McElroy*, 367 U.S. 886; *Greene v. McElroy*, 360 U.S. 474; *Schware* v. *Board of Bar Examiners*, 353 U.S. 232; cf. *Pointer v. Texas*, 85 Sup. Ct. 1056; *Douglas* v. *Alabama*, 85 Sup. Ct. 1074. While this Court has not yet so held, it surely follows from its *Willner* decision, *supra*, that the due process right of confrontation applies to state disbarment proceedings—accusatory proceedings terminating, as here, with the penalty of loss of profession and livelihood. Cf. *Ex parte Garland*, 4 Wall. 333.

ii. Ohio has entrusted disbarment proceedings to Bar Associations rather than to the private injured or accusing parties and, as the facts in this case demonstrate, in such proceedings the State has provided the informant-accuser with the cloak of anonymity. Accordingly, at his trial for breach of ethics petitioner was denied the confrontation necessary to exposure of malice or fabrication by his accuser, although the importance of confrontation was underlined by the refusal of the putative "injured party" to support the charges and the consequent expressed desire of the trial board itself to know the identity of the accuser, which the prosecution nevertheless declined to reveal. Certainly, in such circumstances disclosure would be required under the federal rule announced by this Court in *Roviaro* v. *United States*, 353 U.S. 53, 60-61, that anonymity must give way when an informant-accuser's identity "*is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause . . .*" Due process compels a like result, for this Court has made clear that suppression by state authorities of evidence pertinent "*either to guilt or to punishment*" violates the Fourteenth Amendment (*Brady* v. *Maryland*, 373 U.S. 83, 87), and has recently incorporated the right of confrontation within that Amendment (*Douglas* v. *Alabama*, 85 Sup. Ct. 1074).

iii. Here the appearance of the informant-accuser as a witness was pertinent both to guilt and to punishment, and "essential to a fair determination" of the case. The informant was presumably a knowledgeable witness to the complicated matters involved in the charges, as the trial board itself apprehended in its inquiries about his identity.[4] Moreover, the trial board acquitted the accused on eleven charges and found him guilty only of *technical* breach on the remaining three—in his failure to disclose in advance rather than in his receipt as such of remunerations; thus a showing that the charges were born in the malice of an informant-accuser might well have induced the Board to choose a penalty less severe than public reprimand. In that event, under the applicable Ohio rule (*supra*, p. 3), the Supreme Court of Ohio would have had no jurisdiction to review the case and to increase the penalty, as it did, to suspension from practice.

iv. Moreover, the need to afford the fullest opportunity for defense to the accused in disbarment proceedings is underlined by the contrast with the procedural protections

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[4] In showing that a "fair determination" here required disclosure it should suffice to note that when the trust beneficiaries declined to support the charges against the accused, the trial board itself found the accuser's identity to be material and repeatedly expressed its desire to know it. In any event, as emphasized by the 9th Circuit opinion in *Burwell* v. *Teets*, 245 F. 2d 154, 165, n. 14, an accused denied access to a hostile witness cannot be required to show in advance what his examination would reveal—in that regard the Court properly quotes this Court's stricture in *Alford* v. *United States*, 282 U.S. 687, 692: "Counsel often cannot know in advance what pertinent facts may be elicited on cross-examination. For that reason it is necessarily exploratory; and the rule that the examiner must indicate the purpose of his inquiry does not, in general, apply. . . . It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop." Illustrations of evidence likely to benefit an accused from cross-examination of an informant-accuser are set forth in the concurring opinion of Chief Justice Warren in *Lopez* v. *United States*, 373 U.S. 427, 444, and the dissenting opinion of Justice Douglas in *Rugendorf* v. *United States*, 376 U.S. 528, 541.

of a criminal trial. While the penalty imposable in a disbarment proceeding is far more severe than that which applies to the ordinary criminal case, the burden of proof, presumption of innocence, and other accused-oriented criminal rules are unavailable. Thus, denial of confrontation does not stand alone here as a departure from due process. The hearing resulting in petitioner's disbarment was otherwise lacking in the traditional protections available in accusatory proceedings: the first witness called by the prosecution was the accused; the prosecution was permitted to amend its charge after the proof was in; the burden of proof was expressly placed upon the accused on the key question of notice to beneficiaries; and the court accepted the findings but increased the penalty recommended by the trial body.

v. Events in recent years have re-emphasized the importance of a responsible and independent bar to the maintenance of our democratic institutions. See Pollitt, *Counsel for the Unpopular Cause,* 43 N. C. L. Rev. 9. Human timidity under community and economic pressure has the inevitable tendency of reducing the effectiveness of the bar. Diluting the protections of the lawyer and increasing his risks of disbarment can only exacerbate this tendency. Yet the ruling in this case would impose on attorneys the risk of disciplinary proceeding invoked by anonymous accusers and lacking the most rudimentary safeguards for the accused. If attorneys may be tried on the instance of anonymous informants in proceedings where the accused can be called as the chief witness for the prosecution, be made to bear an affirmative burden of proof, and have the penalty recommended by the trial body increased by a reviewing authority, the vitally necessary independence of the bar may be seriously compromised. Thus, beyond the need to right a grievous procedural unfairness in the suspension of petitioner after forty

years of honorable practice of the law, this Court's review is required to define minimum due process protections under the Fourteenth Amendment for attorneys accused in state disbarment proceedings.

Conclusion

It is respectfully submitted that the writ should be granted.

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APPENDIX A—OPINIONS BELOW

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Case No. 89

IN RE: COMPLAINT AGAINST

CARLTON S. DARGUSCH, *Respondent*

COLUMBUS BAR ASSOCIATION, *Relator*

FINDINGS OF FACT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

This matter came on for the consideration of the Board of Commissioners on Grievances and Discipline on the report of the Hearing Panel, the transcript of the proceedings before the Panel and the exhibits. Upon consideration thereof the Board makes the following Findings of Fact and Recommendation.

FINDINGS OF FACT

The Respondent was admitted to the practice of law in 1925 and has a law office located at 218 East State Street, Columbus, Ohio. He is married and is 64 years of age.

During World War I, a corporation, The Sunday Creek Coal Company, was founded by John S. Jones of Granville, Ohio for the purpose of engaging in deep mining in Southern Ohio. Mr. Jones died in 1927 owning 90 percent of the stock of the corporation (with his key employees owning the balance), and owning the stock of The Granville Inn and Golf Course, Inc., as well as a 600 acre farm located between Granville and Newark, Ohio. In his Will he established a testamentary trust for his three daughters, Virginia Jones Olmsted, Sallie Jones Sexton and Frances Jones Lomas.

In 1942, the Jones testamentary trust terminated and the three beneficiaries received an approximate one-third

share each of the stock of The Sunday Creek Coal Company and of The Granville Inn and Golf Course, Inc., and Mrs. Sexton and Mrs. Olmsted each received approximately one-half of the Jones farm. Thereupon each of the three beneficiaries established a living trust with Chester C. Cook, then chairman of the Board of The Sunday Creek Coal Company and its Vice-President and Treasurer, acting as Trustee for each trust.

In the meantime, Respondent in 1937 resigned as Tax Commissioner for the State of Ohio to go into private practice and became counsel for a number of companies including The Sunday Creek Coal Company. In 1938 he became general counsel and director of the company. In 1940 he became a Vice-President. In 1951, just prior to the death of Chester C. Cook in September of that year, The Sunday Creek Coal Company paid Respondent an annual retainer in the amount of $10,000.00 which continued throughout the three trusteeships to which he succeeded upon the death of Chester C. Cook. At the same time he became chairman of the Board and thereafter took over control of The Sunday Creek Coal Company, voting the stock belonging to the beneficiaries in each of the three live trusts, while carrying on an extensive and lucrative law practice. This continued until he resigned his positions with the company in October 1959.

As a result of various controversies and differences that had arisen from various transactions over the years between Respondent on the one hand, and The Sunday Creek Coal Company and The Granville Inn and Golf Course, Inc., and his beneficiaries on the other, a written compromise agreement and adjustment of all of said controversies and differences was entered into among them in September of 1960. This was identified as Relator's Exhibit 40, offered into evidence by Relator, and objected to by Respondent.

Charge No. 1

Specification 1

While Respondent was in control of The Sunday Creek Coal Company, Respondent caused the company to pay his

club dues and bills in the amount of $5,762.07 of which a total of $4,292.89 was for travel and entertainment, liquor bills in the total amount of $2,634.13, and petty fund advances in the total amount of $1,000.00. Cash advances in the total amount of $2,570.00 were obtained by Respondent from the Columbus Club during the years of 1955 through 1959 and paid for by The Sunday Creek Coal Company. Substantially all of these amounts were for bills and expenses personal in nature and unrelated to the business of The Sunday Creek Coal Company, and were paid without the knowledge or express consent at the time of the beneficiaries of the three trusts.

By reason of the foregoing, the Board finds that Respondent was guilty of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio in that he has violated Canons 6, 11, 29, 32 and 38 of the Canons of Professional Ethics.

Specification 2

It was stipulated by and between the parties that The Sunday Creek Coal Company purchased a Cadillac in 1957, costing $11,748.00, for the use of Respondent. This was used by Respondent as his personal car on personal business, with expenses from time to time charged to and paid by The Sunday Creek Coal Company. In September, 1959 title to this automobile was transferred from the company to Respondent.

The Board finds, however, that the furnishing of an automobile to Respondent as an officer of the company followed the previous customary practice in the company, which was known to the beneficiaries and never objected to. Accordingly, the Board finds there has been a failure of proof of any misconduct as to this specification.

Specification 3

In 1952 an unfunded retirement plan was adopted by The Sunday Creek Coal Company. In 1954 the compensation to be paid under the plan was increased. In 1955 purchase of group life insurance was approved. In 1957 purchase

of major medical policies were authorized. In all of these actions, Respondent was qualified as a participant who would benefit by them, along with other employees of the company.

On December 5, 1955, Carlton Dargusch, Jr., son of Respondent, was employed as Assistant Secretary and Assistant General Counsel at a compensation of $1,000.00 per year. During the same time, Respondent continued to be employed as General Counsel of the Corporation at a retainer of $10,000.00 per year, with specific employment being entered into therefor pursuant to action of the Board of Directors for a period to end on December 31, 1958 and on another occasion by written contract for a period from April 1, 1957 to December 31, 1963.

By reason of the financial condition of the company existing during those years, there may be involved a serious question of judgment as to the precise programs approved, but no question is raised as to recognized corporate practice and purpose and the reasonableness of compensation to the son and the retainer fee. Furthermore reports were made available at all times to the beneficiaries covering all of these matters. Accordingly, the Board finds no evidence sustaining any charge of misconduct as to this specification.

Specification 4

On July 2, 1955, while Respondent was in charge and control of The Sunday Creek Coal Company, its Board of Directors approved the purchase of 1500 shares of stock from the C. C. Cook estate and 1000 shares of stock from a Mrs. Dukes, widow of a former employee of the company, at $20.00 per share. On January 7, 1957 the Directors approved an employee stock purchase plan whereby the same was to be sold to employees, including Respondent, at a price of $17.00 per share, the purchase price to be paid over a period of ten years and credit to be given for dividends paid. On October 6, 1958 the stock purchase plan was amended by the Board of Directors to permit a credit on the purchase price of stock of $1.00 per share per year, dividends at that time no longer being declared.

On April 6, 1959 the Board of Directors of The Sunday Creek Coal Company authorized the purchase of stock of Emma Newton Lowry and Gertrude Smith at $15.00 per share. This stock was then offered to employees, including Respondent, under an employee purchase plan, at $12.75 per share, with the $1.00 credit per year over a ten year period.

These stock purchase plans were designed as an incentive to the employees and for the purpose of enlisting and holding their loyalty. Beneficiaries of the trust were aware of these plans and made no objection. Accordingly, the Board finds that there is no evidence sustaining any charge of misconduct as to this specification.

Specification 5

Motion of Respondent to dismiss this specification was sustained, particularly when the evidence reflected that upon objection of one of the beneficiaries the contract complained of was not carried out.

Specification 6

On July 7, 1958 while Respondent was in charge and control of The Sunday Creek Coal Company, its Board of Directors authorized borrowing $70,000.00 from the Lomas trust and paying a $2500.00 finders fee to that trust for the loan. Respondent's firm (Respondent and son) was paid a $900.00 fee from the Lomas trust for legal services performed in connection with the loan. At the time the bank credit of the company had been cut off by the Huntington Bank and money was needed urgently to advance money to small producers on company property whose production the company had the exclusive right to sell. No claim is made as to the fee being unreasonable. Appraisals were secured and the collateral put up was ample security, with no question of prudence urged or default claimed or occurring. However, Mrs. Sexton at least had no knowledge of this transaction and accordingly the Board finds that Respondent was guilty of misconduct as defined in Section

5 of Rule XXVII of the Supreme Court of Ohio in that Respondent has violated Canon 6, 11, and 38 of the Canons of Professional Ethics.

Specification 7

The financial statements of The Sunday Creek Coal Company as introduced into the evidence reflect substantial operating losses and a deteriorating financial condition but reports of the financial condition were at all time available and furnished. The general financial condition of the company at least was known to all of the beneficiaries and always could have been ascertained in detail. Business judgment as to various measures taken may have been questionable, but no charge of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court is sustained by the evidence.

Specification 8

There was a failure of proof as to this specification and motion for dismissal as to it was sustained.

Specification 9

Respondent as trustee of the Lomas trust loaned $30,000.00 to his son, Carlton Dargusch, Jr., An independent appraisal was obtained of the real estate mortgaged and reflected ample security. No question is raised as to the rate of interest charged and paid. There were no defaults and the loan was paid in full in 1959. The evidence is undisputed that Respondent discussed this loan with Mrs. Lomas and secured her prior approval. While some question is suggested as to Respondent's judgment in loaning money as trustee to his son, the Board finds that there has been a failure of proof of any act of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio as to this specification.

Specification 10

Evidence is undisputed from the Minutes of The Sunday Creek Coal Company that on March 6, 1957 Respondent pre-

sided at the annual stockholders meeting of the company and voted the stock of the three trusts in favor of the resolution set forth in this specification. This action was not taken by express consent after full disclosure of the facts to the beneficiaries and would have benefited the widow or heirs of the Respondent. Accordingly, the Board finds that Respondent has been guilty of misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio in that he has violated Canon 6 of the Canons of Professional Ethics.

Specification 11

During the years 1955 through 1958, Respondent as Trustee of the Lomas trust made over 20 separate loans to one Irvin Stein and Associates in total amounts exceeding $200,000.00. At the same time as Trustee of the Lomas trust, Respondent borrowed substantial sums during the same years from Huntington National Bank. The loans to Mr. Stein was partly from moneys derived from the moneys borrowed from the Huntington National Bank. Previously Respondent had represented Irvin Stein on a tax matter and in the acquisition of certain real estate and ceased to represent Stein in 1962 or 1963. Coincident with the loans to Irvin Stein and Associates in 1955, Naples (Florida) Companies desired to prepay their note to the Lomas trust at a discount. Respondent as Trustee of the Lomas trust permitted the Naples Companies to pay off its loan at a discount of $2,800.00. Stein then paid the Lomas trust the sum of $5,000.00 to cover the discount given to the Naples Companies and a fee of $2,200.00 charged by Respondent's law firm to the Lomas trust for services in handling the loan to Irvin Stein and Associates at that time.

The moneys borrowed from the Huntington National Bank were at an interest rate of 4 percent, the Naples Companies paid 5 percent and the moneys loaned to Stein and Associates were at interest rates varying from 6 percent to 7½ percent. Mrs. Lomas was advised of all of the details of the Stein loans and the loans were covered in the trust

reports. There is no charge or evidence that the fee of $2,200.00 was excessive.

In 1957 Respondent as Trustee of the Sexton trust made three short term loans to Irvin Stein and Associates. These loans were paid back in the same year and accounted for in trust reports. Respondent advised Mrs. Sexton of his relationship with Mr. Stein and the loans were covered in his trust reports to her.

No claim is made that any of the loans to Stein and Associates were made imprudently. Nor is there any question as to the authority of the Trustee to make investments to produce income in the various trusts.

The Board finds that there has been a failure of proof of any misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio as to this specification.

Specification 12

In 1954, Respondent as Trustee of the Loans trust loaned $100,000.00 to the T. Marzetti Company, for which company Respondent had performed miscellaneous legal services from about 1937. To secure this loan a first mortgage was given on real estate which had been appraised and in addition thereto the T. Marzetti Company put up additional collateral by pledging 1500 shares of stock in the City National Bank & Trust Company of Columbus. The loan has since been paid off and no fee was received by Respondent or his law firm in handling this transaction.

Respondent's wife's brother married Irene Marzetti years ago and at the time of the loan lived in Dallas, Texas. Approval of Mrs. Lomas was obtained by telephone and discussed with her personally. Disclosure was made of Respondent's representation of the Marzetti interests and the relationship with Irene Marzetti. No complaint was ever made by Mrs. Lomas and the same was accounted for in trust reports to Mrs. Lomas. Accordingly, the Board finds that there has been a failure of proof of any misconduct as defined in Section 5 of Rule XXVII of the Supreme Court of Ohio as to this specification.

Specification 13

Respondent admittedly had discussions with Frank Smith, an officer of The Sunday Creek Coal Company as to the desirability of making some political contributions. The record discloses that Frank Smith, officer of the company, would turn in expense vouchers for cash which in turn was turned over to James A. Graham, Comptroller of The Sunday Creek Coal Company, with instructions from Mr. Smith to take the money to Respondent. This he did and Respondent then used the money for making political contributions. Respondent denies knowledge of how and why the money went from Smith to Graham to Respondent, or what the precise source of the money was. In any event, the specific charge is that the Respondent "caused certain officers of said company" "to turn over to him certain sums of money" "to use for political contributions." The evidence falls short of sustaining this particular charge, and accordingly the Board makes no finding of misconduct based on this specification.

Charge 11

Before charges were filed herein, Respondent and his counsel on December 27, 1962 conferred with Mr. Sol Morton Isaac and Mr. Jack Crites, constituting at that time the investigating subcommittee of the Professional Ethics Committee of the Columbus Bar Association. A transcript of a statement at that time taken from Respondent and his then counsel was offered in evidence and identified in this record as Relator's Exhibit 24.

This Board feels that Relator's Exhibit 24 is admissible in support of a charge based on violation of Canon 22 as to "candor and fairness" and no foundation of denial would be a prerequisite to its use. Respondent is a party to this proceeding. It is not a matter of impeachment, but rather substantive proof as to whether Respondent at the time was being candid and fair "with other lawyers"—members of the investigating subcommittee. Respondent was not asked any questions as to any part of the exhibit and the Board has no way of assessing what, if any, explanation or clarification Respondent might have made as

to any such. Suffice it to say, in examining the exhibit the Board does find some variations from testimony of Respondent in this proceeding. However, such variations are not of sufficient moment and probative value in the opinion of the Board so as to constitute sufficient proof of any violation of Canon 22 of the Canons of Professional Ethics.

Objection of Respondent to Relator's Exhibit 40 is sustained.

Respondent has had a varied and distinguished career. Prior to his admission to the Bar, he was employed as a legislative draftsman of the Ohio General Assembly. Following his admission to the Bar he was appointed Examiner in the Department of Taxation. In 1931 he became Chief Counsel of the Department of Taxation. Two years later he was appointed Tax Commissioner by the Governor of the State of Ohio and served until 1937 when he resigned to enter the private practice of law. In October of 1940, he was inducted into the Armed Forces and remained on active duty until 1947. He is a holder of the Army Distinguished Service Medal, the Army Commendation Medal with a Cluster, the Army's Award for exceptional civilian service, and is now a retired officer of the United States Army with the rank of Brigadier General.

He has served 22 years as trustee of Ohio State University and has the Ohio State University Distinguished Service Award. He has served as counsel and on the Board of many corporations and public institutions and organizations. Respondent is a recognized authority on manpower and has served the United States Government in many important capacities, here and abroad. He has written various publications and is rated "av" in the Martindale-Hubbell Law Directory.

The record further reflects considerable time elapsed before the filing of the charges herein and that none of the beneficiaries of the trusts which respondent served as trustee have had any part or interest in pressing the charges filed in this proceeding. It is evident that they had their complaints and criticisms of his management and actions, leading to termination of any further services of Respondent in 1959, but not with any ethical considerations

on their part in mind. However, this Board feels that it is its duty regardless to review the record thoroughly for any ethical misconduct involved regardless of the time elapsed and the interest of these beneficiaries, and regardless of what standing and career may have been achieved by Respondent. The discipline of the legal profession requires the same searching scrutiny, whatever be the station of the Respondent or the interest of those who may be most immediately affected by his conduct. This must be done, without fear or favor, and not be prejudiced by any lack of interest from any quarter.

Recommendation

From all of the foregoing, it is the recommendation of the Board that the Respondent, Carlton S. Dargusch, be publicly reprimanded.

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BEFORE THE SUPREME COURT OF OHIO

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COLUMBUS BAR ASSOCIATION,

v.

DARGUSCH.

• • • • • • •

(D. D. No. 62—Decided December 2, 1964.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Mr. John L. Davies, Jr., Mr. Sol Morton Isaac and *Mr. James C. Justice,* for relator.

Mr. Richard C. Addison and *Mr. John J. Chester,* for respondent.

Per Curiam. The relator, the Columbus Bar Association, filed a complaint against the respondent, Carlton S. Dargusch, Sr., containing 14 specifications of misconduct alleged to have been in violation of Canons 6, 11, 22, 29, 32 and 38 of the Canons of Professional Ethics. Except for specifications 1, 6 and 10, which will be discussed below, the Board of Commissioners on Grievances and Discipline found that the charges were not sustained by the evidence and recommended that the respondent be publicly reprimanded.

On September 29, 1964, this court issued an order to show cause why the findings of fact by the board of commissioners should not be adopted and, if they or any part of them were adopted, what disciplinary action should be taken. On November 5, 1964, the court heard arguments on behalf of the relator and the respondent.

The basic question raised in this proceeding is whether the respondent acted unprofessionally, while serving as trustee of three living trusts, by representing conflicting interests without a full disclosure of the same to the beneficiaries of the trust. The standards which a lawyer who

may represent conflicting interests must observe are found in Canons 6, 11 and 38, which provide in pertinent parts:

Canon 6. "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

Canon 11. "Money * * * or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances * * * be used by him."

Canon 38. "A lawyer should accept no compensation, commissions, rebates or other advantages from others without the knowledge and consent of his client after full disclosure."

The evidence shows that, in 1927, John S. Jones, of Granville, Ohio, died owning approximately 90 per cent of the stock of the Sunday Creek Coal Company (hereinafter called Sunday Creek), the stock of the Granville Inn and Golf Course, Inc. (hereinafter called Inn), as well as a 600-acre farm. In his will, he placed the foregoing property in a testamentary trust for his three daughters. In 1942, the testamentary trust terminated, and thereupon the three beneficiaries each established a living trust with Chester C. Cook, then chairman of the board of Sunday Creek and its vice-chairman and treasurer, as trustee for each trust.

Respondent's connection with Sunday Creek dates from 1938, when he became general counsel and director of the company, until October 1959, when he resigned from his positions with the company and the three trusts were revoked. In 1940, he became vice-president. In September 1951, following the death of Cook, respondent became trustee of each of the three living trusts and also became chairman of the board of Sunday Creek. At that time, while carrying on an extensive and lucrative law practice, he took over control of the company and voted the stock belonging to the beneficiaries of each of the three trusts.

Respondent, individually and through his law firm, served as general counsel for Sunday Creek from 1938 to 1959 at an annual retainer of $10,000. In 1954, a retainer contract covering legal services through December 31, 1958, was executed. A new retainer contract for legal services from April 1, 1957, to December 31, 1963, was executed in 1957. In March 1957, respondent's annual salary as chairman of the board of directors was increased from $5,000 to $7,500. Under the trust instruments, respondent was entitled to receive after September 1951 trustee fees equal to 7½ per cent of the gross annual income of the trusts.

As a result of various controversies that had arisen respecting transactions, occurring through the years, between the respondent on one hand and Sunday Creek, the Inn and the trust beneficiaries on the other hand, a written compromise was entered into among them in September 1960. Under the agreement, in addition to mutual releases, respondent paid $17,000 to Sunday Creek and sold and delivered to Sunday Creek and to the Inn all the stock of such corporations standing in his name or the name of his son, and the two policies of life insurance held by the pension trust of Sunday Creek on the life of respondent were assigned and delivered to him.

With respect to specification 1, the evidence shows that from time to time between 1951 and 1959 respondent caused Sunday Creek to pay his club dues and bills at the Columbus Country Club and the Columbus Club in the amount of $5,762. Sunday Creek also paid $4,292 for respondent's travel and entertainment and paid $2,634 for liquor bills incurred by respondent. Sunday Creek advanced to the respondent $1,000 from petty cash. He obtained from the Columbus Club during the years 1955 through 1959 cash advances in the amount of $2,570, which advances were paid by Sunday Creek. Substantially all these payments were for bills and expenses personal in nature and were not related to the business of Sunday Creek. There is no evidence that such sums paid to and on behalf of respondent were charged on the accounts of Sunday Creek as "salary" or "compensation" for the respondent. The corporate minutes of Sunday Creek failed to reveal any authorization

for any of the payments, and at least Mrs. Sexton, a beneficiary of one of the trusts, was not informed of such payments. The respondent himself failed to recall any notification to any of the beneficiaries of any of these payments on his behalf.

Relative to specification 6, the record shows that, in July 1958, the respondent, while serving as chairman of the board of Sunday Creek, trustee for each of the three trusts and attorney for Sunday Creek, arranged for a loan of $70,000 to Sunday Creek from the Lomas Trust. Respondent testified that, in order to secure the loan, it was necessary for Sunday Creek to pay the Lomas Trust a finders fee of $2,500. The law firm of which respondent was a senior partner received from the trust a $900 fee for legal work arising from such transaction. Appraisals were secured, and the collateral put up was ample security. No question of prudence is urged or default claimed. Mrs. Sexton, the beneficiary of one of the trusts, had no knowledge of this transaction. In a situation such as this, it is acknowledged that generally the borrower is the one who pays for legal services instead of the lender. At this time, respondent as general counsel for Sunday Creek was receiving an annual retainer of $10,000, under a contract with Sunday Creek executed in April 1957 to end in 1963, to handle the legal affairs of the corporation. Under the circumstances, it reasonably may be inferred that respondent, as trustee, paid a portion of the "finders fee" to himself.

Regarding specification 10, the evidence shows that, in March, 1957, at the annual shareholders meeting of Sunday Creek, at which respondent presided as chairman, a resolution was adopted which provided in pertinent part that "in the event of * * * the decease of any other present or future officer or employee who has been in the service of the company for a minimum period of twenty years (including military leave) the salary of such deceased officer or employee shall be continued by the payment of such salary to the widow or heirs for a period of twenty-four months following such decease." The respondent, as trustee, voted the stock in his control in favor of such resolution. Any payment made under the resolution to the respond-

ent's heirs or widow would have been a detriment to Sunday Creek, a detriment to the beneficiaries of the three trusts and, of course, a benefit to his heirs or widow. This action was not taken by the respondent with the express consent of the beneficiaries after a full disclosure of the facts. In fact, Mrs. Sexton, one of the beneficiaries, testified that "General Dargusch did not discuss the administrative policy of Sunday Creek with me in any detail at any time. There was no reason why he should. He was a trustee. He was the Chairman of the Board, and he simply did not do it."

Our careful review of the more than 600 pages of testimony and the approximately 100 exhibits in this proceeding has not been summarized in great detail. However, we believe that the foregoing digest adequately reviews the evidence particularly as it relates to specifications 1, 6 and 10. Since the conduct of respondent as charged and proved in these specifications is contrary to the professional standards quoted above and thus warrants disciplinary action, we find it unnecessary to expound on any doubts which we may entertain respecting other conduct of the respondent affecting his responsibility to the trusts with which he was charged.

A public reprimand as recommended by the board of commissioners is not commensurate with the gravity of the respondent's violations of the Canons of Professional Ethics. On many occasions, this court has imposed disbarment or suspension for an indefinite period on wayward lawyers for conduct no more reprehensible than that of this respondent. For example, see the following recent cases: *Cleveland Bar Assn.* v. *Bilinski* (1964), 177 Ohio St., 43; *Cleveland Bar Assn.* v. *Siegel* (1964), 176 Ohio St., 277; *Mahoning County Bar Assn.* v. *Ruffalo* (1964), 176 Ohio St., 263; *Dayton Bar Assn.* v. *Prear* (1964), 175 Ohio St., 543; *Columbus Bar Assn.* v. *Potts* (1963), 175 Ohio St., 101; *Columbus Bar Assn.* v. *Fodor* (1963), 175 Ohio St., 21; *Columbus Bar Assn.* v. *Agee* (1964), 175 Ohio St., 443; *Columbus Bar Assn.* v. *Jurus* (1964), 175 Ohio St., 449; *Columbus Bar Assn.* v. *Margulis* (1963), 174 Ohio St., 263; *Cincinnati Bar Assn.* v. *Smith* (1963), 174 Ohio St., 452.

The court recognizes the seriousness of depriving one of the privilege of practicing law, particularly for a lawyer who has engaged in the practice since 1925 and who holds and has held many important offices. Although the court does not consider action interfering with such a privilege lightly, it is obligated to apply the standards of professional and ethical conduct uniformly, without regard to length of practice or to the positions a respondent may hold in his community. Under the circumstances of this case, the court is unanimously of the opinion that the minimum discipline should be suspension for an indefinite period from the practice of law, and such discipline is, hereby, imposed.

Judgment accordingly.

TAFT, C. J., ZIMMERMAN, MATTHIAS, O'NEILL, GRIFFITH, HERBERT and GIBSON, JJ., concur.

APPENDIX B

Complaint of Relator, Columbus Bar Association, Against Carlton S. Dargusch

* * * * * * *

Now comes the Relator and alleges that Carlton S. Dargusch an Attorney at Law, duly admitted to the practice of law in this State of Ohio is guilty of the following misconduct:

I. That said Carlton S. Dargusch, being an attorney-at-law, became, on or about August 30, 1951, the Trustee of three Trusts, each for the benefit of a major shareholder of the Sunday Creek Coal Company, an Ohio corporation with its principal office located in Columbus, Ohio. The three beneficiaries of said Trusts were and are sisters, being the daughters of the founder of said Company, and together owned approximately 76% of the stock of said Company, all having voting rights. Pursuant to the powers granted to him by said Trusts, the said Carlton S. Dargusch voted said stock at all of the stockholders meetings from October, 1951, until on or about October 21, 1959. During all of said period, the said Carlton S. Dargusch elected all of the members of the Board of Directors of said Company and caused himself to be elected a Director and was the Chairman of the Board of Directors of said Company and the General Counsel for said Company and served as the Trustee of said Trusts. During all of the times herein mentioned the said Carlton S. Dargusch received compensation from the Company as Chairman of the Board of Directors and as General Counsel and also received compensation as Trustee of said Trusts. During said period stated above, as said Trustee, Chairman of the Board of Directors and General Counsel, the said Carlton S. Dargusch committed, caused to be committed, acquiesced in or participated in the following actions:

(1) From time to time, said Carlton S. Dargusch caused said Company to pay his bills for The Columbus Country Club and The Columbus Club, which in-

cluded cash withdrawals, expenses for parties, other personal expenses and similar items, and also bills for the purchase of liquor and other items of a similar nature, in a total amount in excess of $15,900.00, all unrelated to any business activity of said Carlton S. Dargusch on behalf of said Company and all incurred without the knowledge or consent of either the Board of Directors of said Company or the beneficiaries of said Trusts.

(2) Said Carlton S. Dargusch caused said Company to purchase for his exclusive use an automobile, which was replaced periodically, the last one being a Cadillac costing in excess of $13,000 and caused said Company to reimburse him for or to pay all expenses and maintenance charges for said automobiles and certain expenses of automobiles owned by him. On September 8, 1959, he caused the said Board of Directors of said Company to authorize the transfer to him of the title to said Cadillac automobile mentioned above. All of said expenses were unjustified by any reasonable business activity by Carlton S. Dargusch on behalf of said Company and the purchase of said $13,000 Cadillac was accomplished without the knowledge or consent of the beneficiaries of said Trusts.

(3) Said Carlton S. Dargusch promoted and approved the establishment of an insurance retirement program and other similar programs for said Company in which programs he participated and also secured both for himself and his son, an attorney-at-law, long-term employment contracts with an annual retainer of $10,000 when he well knew that the Company was in a critical financial condition, all without the knowledge or consent of the beneficiaries of said Trusts.

(4) Said Carlton S. Dargusch promoted and approved the purchase by said Company of its own stock from certain minority shareholders for a price ranging from $15 to $20 per share, one of which purchases the Court of Common Pleas of Franklin County,

Ohio, has held to be *ultra vires*, and then promoted and approved the resale of said stock so purchased to employees of the Company, including himself, on terms requiring virtually no cash payments, all without the knowledge or consent of the beneficiaries of said Trusts.

(5) Said Carlton S. Dargusch approved the execution of a contract between the Company and the President and Executive Vice-President to sell to said officers the Company's sales subsidiary, the only branch of the business which had been profitable, all without the knowledge and consent of the beneficiaries of said Trusts.

(6) Said Carlton S. Dargusch negotiated a loan of $70,000.00 to the Company from one of said Trusts, of which he was Trustee, requiring the Company to pay a "finders fee" of $2500.00 to said Trust and then he, as Trustee, paid some portion or all of said "finders fee" to himself.

(7) During all the times mentioned above, and while said Carlton S. Dargusch was in complete control of said Company, the financial condition of said Company steadily deteriorated to the point that it finally became virtually insolvent. The shareholders' equity decreased well over a million dollars from December 31, 1952 to May 31, 1959, and the Company suffered substantial operating losses in every year except one during said period. Said Carlton S. Dargusch failed to advise the beneficiaries of said Trusts of this financial condition and persuaded them not to concern themselves with company affairs. He failed to render them any financial statements of the Company. He caused the Company to pay large dividends to the shareholders from capital assets until the liquid assets were virtually exhausted. It was only when the Company ceased paying such dividends that the shareholders—beneficiaries of said Trusts—realized how precarious the financial condition of the Company had become.

(8) During the times herein mentioned, said Carlton S.

Dargusch, as Chairman of the Board of Directors and as General Counsel of said Company drafted the minutes of the meetings of the Board of Directors which were not read to or approved by the Directors and which on occasion contained matters affecting said Carlton S. Dargusch which had not been authorized by the Directors.

(9) Said Carlton S. Dargusch, as Trustee, of one of said Trusts, loaned $30,000.00 of said Trust assets to his son, Carlton S. Dargusch, Jr., who was then associated with him in the practice of law.

That by reason of the foregoing the said Carlton S. Dargusch has committed acts tending to bring the courts and the legal profession into disrepute and has violated Canons 6, 11, 29, 32 and 38 of the Canons of Professional Ethics as adopted by this Court and Rule XXVIII of the Rules of the Supreme Court of Ohio and his Oath of Office as an Attorney-at-Law.

II. That on or about December 27, 1962, the said Carlton S. Dargusch made false and misleading statements to members of the investigating sub-committee of the Professional Ethics Committee of the Columbus Bar Association in connection with said sub-committee's inquiry with regard to the matters set forth in Count I of the complaint herein, thereby violating Canon 22 of the Canons of Professional Ethics as adopted by this Court and in violation of his Oath of Office as an Attorney-at-Law.

JOHN L. DAVIES, JR.,
50 West Broad Street.

SOL MORTON ISAAC,
8 East Broad Street.

JAMES C. JUSTICE,
40 South Third Street.

CERTIFICATE

The undersigned, BRUCE G. LYNN, Chairman of the Grievance Committee, of the Professional Ethics Committee Association hereby certifies that JOHN L. DAVIES, JR., SOL MORTON ISAAC, and JAMES C. JUSTICE, are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated —, 19 —.

——— ———,
Chairman, Professional Ethics Committee,
Columbus Bar Association,
40 South Third Street,
Columbus 15, Ohio.

* * * * * * *

Now comes the Relator and alleges that Carlton S. Dargusch, an Attorney at Law, duly admitted to the practice of law in this State of Ohio is guilty of the following misconduct:

SUPPLEMENTAL CHARGES

The following specifications as supplemental charges are in addition to specifications numbers (1) through (9) of Count I of the original Complaint filed herein and incorporate the entire first and last paragraphs of Count I as if herein again set forth:

(10) At a meeting of the stockholders of Sunday Creek Coal Company held on March 6, 1957, at which Carlton S. Dargusch presided as Chairman and held as Trustee the majority of voting stock, a resolution was adopted which provided in part that ". . . in the event of . . . the decease of any other present or future officer or employee who has been in the service of the company for a minimum period of

twenty years (including military leave) the salary of such deceased officer or employee shall be continued by the payment of such salary to the widow or heirs for a period of twenty-four months following such decease." The minutes of said meeting reflect that Carlton S. Dargusch voted in favor of said Resolution. Said Resolution would have benefited the widow or heirs of said Carlton S. Dargusch. The minutes of a meeting of the Board of Directors of said Company held on May 7, 1957, at which Carlton S. Dargusch presided as Chairman, reflect the adoption of a motion in substantially similar terms.

(11) Said Carlton S. Dargusch, as Trustee of one of said Trusts, loaned from time to time in excess of $200,000.00 of Trust assets to Irvin Stein and Associates, which loans began in 1956. Contemporaneously with the making of the initial loan, said Carlton S. Dargusch accepted retainer fees as attorney for said Irvin Stein and Associates and/or businesses owned and operated by said borrowers, which retainer was continuous during the Trusteeship of Carlton S. Dargusch. On at least one occasion an additional sum of $20,000.00 was similarly loaned from a second Trust of which said Carlton S. Dargusch was Trustee. During all of said time Carlton S. Dargusch, as such Trustee of said Trust, borrowed money for said Trust from The Huntington National Bank of Columbus, Ohio.

(12) Said Carlton S. Dargusch, as Trustee of one of said Trusts, loaned in excess of $100,000.00 of Trust assets to T. Marzetti Company over a period of several years, during all of which time said Carlton S. Dargusch was the attorney for said T. Marzetti Company and related by marriage to one of the officials or employees of said company.

(13) From time to time, said Carlton S. Dargusch caused certain officers of said Company, including Frank G. Smith, President, to turn over to him certain sums

of money which they had obtained from the company as reimbursement for fictitious expenses and which sums said Carlton S. Dargusch told them he would use for political contributions.

JOHN L. DAVIES, JR.,
50 West Broad Street,
Columbus 15, Ohio.

SOL MORTON ISAAC,
8 East Broad Street,
Columbus 15, Ohio.

JAMES C. JUSTICE,
40 South Third Street,
Columbus 15, Ohio.

Counsel for Relator.

Filed November 29, 1963, John W. McMillan, Sec'y.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE.

COLUMBUS BAR ASSOCIATION, *Relator*

v.

CARLTON S. DARGUSCH, *Respondent.*

This cause came on to be heard upon the relator's and respondent's replies to the Court's Show Cause Order of September 29, 1964 and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the minimum discipline should be suspension for an indefinite period from the practice of law, and such discipline is, hereby, imposed for the reasons stated in the opinion filed herein.

The Respondent, Carlton S. Dargusch, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he hereby is divested of each, any and all of the rights, privileges and prerogatives customarily accorded to members in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Carlton S. Dargusch, surrender forthwith his certificate of admission to practice to the Clerk of this Court and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Carlton S. Dargusch, pay the costs of these proceedings taxed in the amount of One Thousand and Forty-Six dollars and thirty-four cents, ($1,046.34.).

It is further ordered that copies of this Entry be certified to the Respondent, to all counsel of record, to the Board of Commissioners on Grievances and Discipline, to the Columbus Bar Association, to the Presiding Judge of the Federal District Court at Columbus, Ohio and to the Presiding Judge of the Court of Common Pleas for Franklin County, Ohio.

APPROVED: KINGSLEY TAFT, CHIEF JUSTICE.